STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Prairie Hills of Ottumwa, LLC, Appellant, **v.** **Wapello County Board of Review,** Appellee.	**ORDER** **Docket Nos. 12-90-0407 &** **13-90-0825** **Parcel No. 007411540013020**

On October 14, 2013, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Appellant Prairie Hills of Ottumwa, LLC was represented by attorney Deborah M. Tharnish of Davis Brown Law Firm, Des Moines, Iowa. County Attorney Lisa Holl represented the Board of Review. Both parties submitted evidence in support of their positions. The 2012 and 2013 appeals were consolidated for hearing. The Appeal Board now, having examined the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Prairie Hills of Ottumwa, LLC appeals from the Wapello County Board of Review decision reassessing its property located at 173 East Rochester, Ottumwa, Iowa. According to the property record card, the subject property was built in 2006 and is a 40,939 square-foot, one-story assisted living center. The center has 50 living units ranging in size from 741 square-feet to 1141 square-feet. The building has superior quality construction (1+30), and is in normal condition. There is also a 1936 square-foot detached, eight-stall garage. The property is improved by concrete paving, canopy, open porches, and yard lighting. The site is 5.720 acres.

The real estate was classified commercial for the January 1, 2012, assessment and valued at $3,200,000, representing $277,000 in land value and $2,923,000 in improvement value. It was also

classified commercial for the January 1, 2013, assessment and valued at $3,151,000, allocated $228,000 in land value and $2,923,000 in improvement value.

In both 2012 and 2013, Prairie Hills protested to the Board of Review on the ground that the property was misclassified under Iowa Code section 441.37(1)(a)(3). (Exhibits 4 & 7). It asserted the property's correct classification was residential. The Board of Review denied both petitions.

Prairie Hills then appealed to this Board and reasserted its claims. It contends it followed all statutory requirements to convert the property into condominiums units under Chapter 499B. As condominiums, the units should be classified residential for assessment purposes.

Steve Gordon, Vice President, owner, and managing member of Prairie Hills, testified on its behalf. Gordon stated Prairie Hills Assisted Living, Inc. owns six assisted living facilities in eastern Iowa. Of those properties, Prairie Hills is the only one classified commercial. Four of the centers are very similar to the subject property, and were built much like it. The other property was previously built and then purchased by Prairie Hills.

Gordon testified the average Prairie Hills resident is 87 years old and eight of the units are reserved exclusively for memory care patients. Due to residents' age, cognitive abilities, and related fire and safety concerns, cooking is not permitted in any of the units. All units have a refrigerator and a microwave, but none have stoves or ranges. Gordon explained the tenants' base rent includes all meals which are served from a common kitchen and dining area at the end of each hall.

Gordon testified attorney Robert Douglas prepared a letter to the City of Ottumwa (City) in October 2011 giving the City sixty-day's notice of Prairie Hills' intent to convert the property to condominiums. (Exhibit 8). Prairie Hills attached a document to the letter for the City to review and sign titled, "City Approval Pursuant to Iowa Code Section 499B.3(2) For Conversion to Horizontal Property Regime." The correspondence was intended to fulfill the requirements of section 499B.3(2). We note this was not the first time Prairie Hills attempted to convert to condominiums. The original

declaration was filed in December 2010; however, the Assessor rejected residential classification for the property because Prairie Hills had not previously provided sixty-day's notice to the City. (Exhibit 2).

Prairie Hills received no response from the City indicating whether the facility met building codes. Subsequently, in late December 2011, more than sixty days after giving notice, Prairie Hills filed its declaration of condominium with the Wapello County Recorder. The declaration was recorded and date-stamped on December 30, 2011. (Exhibit 9).

In mid-April 2011, City Attorney Joni Keith wrote to Douglas to notify Prairie Hills of the City's determination that Prairie Hills did not comply with City code. (Exhibit 8). This was nearly six months after the City received notice of the intended conversion. Keith's letter explained the city housing code required all dwellings to have enough space to accommodate a refrigerator, stove or range, and to contain the proper access terminals connected to utilities to operate the appliances. *See Chapter 20 Housing, Section 20-5* (Exhibit 11). The City found Prairie Hills' kitchens have enough space to accommodate a stove or range but does not have the either an electric or gas terminal to connect the appliance. The letter concluded, "Upon the proper installation of a stove or range for these proposed condominium units, the City would sign the Approval submitted with your Conversion Application."

While the letter from the City indicated the kitchens lacked gas or electric terminals, Gordon testified standard 110/120 electric terminals were installed in the kitchens. Gordon further noted he personally confirmed with the construction manager and company that built the building that the one-burner stove (Exhibit 3) could be placed in each of the units in Prairie Hills. He stated there is space and the appropriate outlet to do that if Prairie Hills chose to install them.

County Assessor Gary Smith testified he incidentally learned in late March or early April 2012 that the subject property had been inspected and was not approved for condominium conversion**.** He

was told it was not approved because it did not comply with the city building code requirements. Smith testified he thought it was unfair for property-owners to have to wait indefinitely for the City's decision on its application for condominium conversion and had initially calculated the assessed value of the subject property based on condominium status and residential classification.

Smith walked through the property a few weeks prior to this Board's hearing and looked at the electrical outlets in the units. In Smith's opinion, no actual stove or range is necessary under the city code, only the space for a stove or range and an electric or gas terminal. This is consistent with a Response to Request for Admission, wherein the Board of Review admitted that no stove or range needed to be installed under the housing code. (Exhibit 10). Smith noted there are standard 110/120 electric plugs in the kitchens. He reviewed a manual for suitable ceramic glass cooktop offered by Prairie Hills (Exhibit 3). He said the one-burner stove would be operable with the current electrical, but he believed the cooking unit would need to be "hot-wired" directly to the power source rather than plugged into an existing outlet. Smith testified he worked for electricians at one time, and his opinion was apparently based on this experience. A review of the manual instructs the electric supply must be from an individual grounded circuit that is protect by a circuit breaker and rated per the model specifications. It warns installations must comply with all local, state, and national electrical codes and failure to comply with the applicable codes may result in fire, property damage, personal injury, or death. (Exhibit 3, p. 4). The manual does not clearly indicate the unit must be "hot-wired," as Smith stated.

Conclusion of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board

determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id*. The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

Prairie Hills asserts its property is misclassified and its actual classification should be residential as condominium property under Iowa Administrative Code rule 701-71.1(4). It makes two arguments in support of its claim: It first asserts it followed all of the statutory requirements for converting to condominiums under section 499B.3 and has filed its declaration, and the City failed to timely prevent conversion. This argument is essentially that the City failed to notify Prairie Hills of any potential non-compliance and cannot now raise the issue and subsequently deny a residential classification for the property. Its second argument is that Prairie Hills complies with the ordinance.

No statutory provision makes condominiums conversions organized under Chapter 499B residential per se. *See contra* Iowa Code § 441.21(11) (requiring residential classification for multiple housing cooperatives organized under Chapter 499A). However, rule 701-71.1(4) states that condominiums used for human habitation should be classified residential:

> An apartment in a horizontal property regime (condominium) referred to in Iowa Code chapter 499B which is used or intended for use for human habitation shall be classified as residential real estate regardless of who occupies the apartment. Existing structures shall not be converted to a horizontal property regime unless building code requirements have been met.

Id.

If the property does not meet the requirements of rule 701-71.1(4), namely that building code requirements have been met, then it must be classified commercial real estate under rule 71.1(5). This requirement is also stated in section 499B.20 which provides:

> After April 25, 2000, an existing structure shall not be converted to a horizontal property regime unless the converted structure meets local city . . . building code requirements on the date of conversion . . .

The first issue in this appeal pertains to the 60-day notice provision contained in section 499B.3. Section 499B.3 requires a City (or County) be provided sixty-day's notice of intent to convert an existing structure to condominiums under the chapter. It states:

> If the declaration is to convert an existing structure, the declarant shall file the declaration of the horizontal property regime with the city in which the regime is located […] at least sixty days before being recorded in the office of the county recorder to enable the city […] to establish that the converted structure meets appropriate building code requirements as provided in section 499B.20.

The Iowa Supreme Court has noted this statutory requirement is a "minimum standard" that property owners must meet when attempting to convert property into condominiums. *Timberland Partners XXI, LLP v. Iowa Dep't of Revenue*, 757 N.W.2d 172, 176 (Iowa 2008).

The applicable local building regulation in this appeal is section 20-5 of Ottumwa's Housing Code which requires that every dwelling unit must have a kitchen room "equipped with . . . (3) . . . proper access terminals to utilities necessary to properly operate a refrigerator and stove or range." The State Building Code Act defines 'building regulations' as "any law, bylaw, rule, resolution, regulation, ordinance, or code or compilation enacted or adopted, by the state or any governmental subdivision . . . relating to the construction, reconstruction, alteration, conversion, repair or use of buildings." § 103A.3(3). Although section 499B.20 and rule 701-71.1(4) only explicitly require compliance with "building code requirements," we do not so narrowly read those provisions so as to exclude a local housing code or other local building regulation as defined in section 103A.3. *See* David R. Sheridan, Op. Att'y Gen., No. 04-2-1 (Feb. 17, 2004) (concluding that "when the state

building code is not applicable, Iowa Code section 499B.20 requires compliance with all local building regulations, not merely those regulations labeled as local "building code.").

The unique facts of this case require this board to examine the interplay between sections 499B.3 and 499B.20. We find no case law interpreting the 60-day notice provision in Chapter 499B. Prairie Hills argues this is the time period during which the City is required to determine if a property complies with the building code as referred to in section 499B.20. Prairie Hills further asserts that because the City failed to take any action during this time that it has properly filed its declaration and is entitled to residential classification.

Section 499B.3 does not state the consequences of a city failing to take any action regarding a property owner's intent to file a declaration. Conversely, section 499B.20 mandates that before converting to a condominium, a property must comply with local building codes. Upon examination of the general scope and meaning of all provisions of Chapter 499B, section 499B.3 and the effect of section 499B.20 appear ambiguous because reasonable persons could disagree as to their meaning. *IBP, Inc. v. Harker*, 633 N.W.2d 322, 325 (Iowa 2001) ("Ambiguity may arise in two ways: (1) from the meaning of particular words; or (2) from the general scope and meaning of a statute when all its provisions are examined."). Having determined the statute to be ambiguous, we must turn to the rules of statutory construction to determine the effect of the sixty-day notice period on the requirements of section 499B.20, and whether the City's failure to act during this time effectively waived its ability to claim that Prairie Hills does not meet local building codes. *State v. Spencer*, 737 N.W.2d 124, 129 (Iowa 2007) ("Before engaging in statutory construction, a court must first determine whether the statute is ambiguous.").

We begin by recognizing that when enacting a statute, it is presumed that "the entire statute is intended to be effective" and "public interest is favored over any private interest." Iowa Code § 4.4. In construing statutes, all parts are considered together without attributing undue importance to any

single or isolated portion. *Iowa Southern Utilities Co. v. Iowa State Commerce Com'n*, 372 N.W.2d 274 (Iowa 1985).

The goal of statutory construction is to determine legislative intent. *State v. Tarbox,* 739 N.W.2d 850, 853 (Iowa 2007). In determining legislative intent, the following is considered: the object sought to be attained, the circumstances under which the statute was enacted, the legislative history, common law or former statutory provisions, consequences of a particular construction, administrative construction of a statute, and the preamble or statement of policy. § 4.6. For the purposes of statutory construction, legislative intent is determined by the words chosen by the legislature, not by what it should or might have said. *Tarbox*, 739 N.W.2d at 853. The court looks to the objects to be accomplished, purpose to be served, and seeks a reasonable interpretation that best achieves the purpose of the statute. *State v. Boggs*, 741 N.W.2d 492, 502 (Iowa 2007); *Klinge v. Bentien*, 725 N.W.2d 13 (Iowa 2006). Legislative intent can be derived not only from the subject matter of statutes, but also the consequences of the competing interpretations. *Id*. at 503.

We note at the outset that sections 499B.3 and 499B.20 were both enacted contemporaneously in 2000 Iowa Acts, ch. 1142. Neither that Act nor Chapter 499B contains a preamble or statement of policy.

On its face, Prairie Hill's argument appears logical; however, to adopt its interpretation of 499B.3 would nullify the section 499B.20 requirement that a converting property shall comply with local building codes. Under Prairie Hill's interpretation, a property that was not in compliance with the building code could convert to a horizontal property regime and receive the beneficial tax treatment of a residential property merely because a local government body did not respond to the declaration of the horizontal property regime within sixty days.

We again note the Department of Revenue's administrative rule 701-71.1(4) which provides that "existing structures *shall not* be converted to a horizontal property regime unless building code

requirements have been met." The administrative interpretation of Chapter 499B appears to mandate that an existing structure cannot convert to a horizontal property regime for residential property classification purposes if it does not meet the building code requirements, regardless of the whether the local government body has responded to its declaration filed under 499B.3.

Section 499B.20 and the administrative rule favor the public interest as they promote public safety and welfare. The stated purpose of the city of Ottumwa's Housing Code is to "ensure that housing facilities and conditions are of the quality necessary to protect and promote the health, safety, and welfare not only [of] those persons utilizing the housing, but the general public as well." § 20-1. As the Iowa Supreme Court noted in *Timberland Partners XXI, LLP v. Iowa Dept. of Revenue*, 499B.20 "provides a minimum standard that property owners must meet when attempting to convert apartment buildings into condominiums and outlines the State's heightened stewardship requirements for owner-occupied property." 757 N.W.2d 172, 176.

We are cognizant of the testimony at hearing indicating Prairie Hills chose not install stoves or ranges in the apartments for the safety of the residents. This decision appears to be consistent with Iowa Administrative Code rule 481-69.35(f), which requires assisted living facilities serving patients with cognitive impairment or dementia to remove or disable appliances that present a danger to the residents or others. However, we also acknowledge that if the property were to be conveyed to a different owner, the new owner may make a different choice.

We find the interpretation of section 499B.3 advocated by Prairie Hills as applied to the facts of this case would render ineffective section 499B.20's requirement that a converting property shall comply with the local government's building code. The Department of Revenue's interpretation supports the conclusion that compliance with local building regulations is required prior to converting an existing structure to a horizontal property regime for property assessment purposes and is not waived by the failure of a city to respond to a declaration filed under 499B.3. Finally, we believe that

public safety and the public interest are best advanced by following the Department of Revenue's interpretation. Therefore, we cannot conclude the City's failure to act during the sixty-day notice period effectively caused the City to waive any determination that the property did not meet local building regulations. As a result, we must now determine whether Prairie Hills has established, by a preponderance of the evidence, that it meets the requirements of section 20-5 of Ottumwa's Housing Code.

The factual issue in this case hinges on whether the terminal (i.e. electric outlet) in Prairie Hill's kitchen areas complies with section 20-5. Again, section 20-5 requires a dwelling to contain a kitchen which is "equipped with . . . (3) . . . proper access terminals to utilities necessary to properly operate a refrigerator and stove or range." The facts establish that in some of the units there is only one 110/120 outlet in the kitchen area. Gordon testified that currently both a refrigerator and microwave are plugged into this outlet. He also testified that he was advised by the property's construction manager that the one-burner stove (Exhibit 3) could be placed in each of the units in Prairie Hills. As a result, Prairie Hills asserts it could plug the single-burner range into this outlet instead of the microwave.

The Board of Review, however, contends it cannot do so in compliance with section 20-5. Smith testified he believes the power supply would be appropriate, but that not both the refrigerator and range could be plugged into the single outlet. Smith also appeared to question whether this range plugged in at all and instead may instead require "hard wiring." Additionally, the City determined there were not appropriate terminals in these units in its April letter.

Notably, neither party presented testimony or evidence from an electrician, contractor, or anyone purporting to be an expert in the area of electrical work. Prairie Hills only evidence of its compliance with section 20-5 was a hearsay statement from the property's construction manager. Conversely, Smith stated he once worked for an electrician and he determined the subject property did

not meet the requirements of section 20-5. Although it is possible that hearsay can establish a fact by a preponderance of the evidence, in this case in light of the conflicting testimony, we find it does not establish the existing terminal(s) meet the necessary requirements under the city code. Further, after considering the documentary evidence and testimony, we conclude there is not sufficient evidence to determine the terminals comply with city of Ottumwa's Housing Code section 20-5. Because we cannot determine the terminals meet code, we also cannot conclude that Prairie Hills' property should properly be classified residential as local building codes and regulations must be complied with prior to conversion under section 499B.20 and r. 701-71.1(4).

THE APPEAL BOARD ORDERS that the January 1, 2012 and 2013, assessments of the Prairie Hills' property located at 173 East Rochester, Ottumwa, Iowa, are affirmed. The assessed valuations remain unchanged.

Dated this 16th day of December, 2013.

Jacqueline Rypma
Jacqueline Rypma, Presiding Officer

Stewart Iverson
Stewart Iverson, Board Chair

Karen Oberman
Karen Oberman, Board Member

Copies to:

Deborah M. Tharnish
Davis Brown Law Firm
215 10th Street, Suite 1300
Des Moines, IA 50309
ATTORNEY FOR APPELLANT

Lisa L. Holl
Wapello County Attorney
219 N. Court
Ottumwa, IA 52501
ATTORNEY FOR APPELLEE